

REMARKS

Claims 11-17 are all the claims pending in this application. The first sentence of the specification has been amended to update the status of parent application no. 08/726,170, which is now U.S. Patent 6,299,838.

Entry of the above amendment is respectfully requested.

Initially, it is noted that the Examiner has neither acknowledged Applicants' claim to priority under 35 U.S.C. § 119, nor indicated that the certified copies of the priority documents have been received. Since priority was claimed when the application was filed and the priority documents were filed in the parent application, the Examiner is respectfully requested to acknowledge Applicants' claim to priority and indicate that the certified copies are of record.

In addition, although the Examiner has marked item number 3 under attachments on the Office Action Summary, an initialed and signed copy of the PTO-1449 form submitted on August 21, 2001, was not attached. Accordingly, the Examiner is respectfully requested to return a copy of the initialed and signed PTO-1449 Form.

I. Response to rejection of claims 11-17 under 35 U.S.C. § 112, second paragraph

On page 2 of the Office Action, the Examiner rejects claims 11-17 under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Basically, the Examiner asserts that it is not entirely clear if the claimed black color meets the claimed three requirements that the color (1) reflect an amount of light

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at a measured wavelength, (2) fully absorbs light at a measured wavelength and (3) the color has substantially no influence on the light reflected back.

Applicants respond as follows.

Claim 11 recites that at least a portion of said cover covering the detecting area is of a color which one of reflects an amount of light at a measured wavelength, and fully absorbs light at a measured wavelength. Therefore, the claim recites that the color reflects an amount of light or fully absorbs light.

In addition, at page 10, the present specification discloses that a color which substantially has no influence on the reflected light is a color in which light reflection at a measured wavelength is lower or a color which fully absorbs light of a measured wavelength. Further, the present specification discloses that black can absorb light over a broad range of wavelengths, and therefore is a color that substantially has no influence on the reflected light.

Therefore, it is submitted that black is a color that fully absorbs light and substantially has no influence on the reflected light.

Accordingly, Applicants respectfully submit that the scope of the claim is clear and one of skill in the art would understand the meaning and scope of the claim.

In view of the above, withdrawal of the foregoing rejection is respectfully requested.

II. Response to rejection of claims 11-17 under 35 U.S.C. § 102(a)

On pages 2-3 of the Office Action, the Examiner rejects claims 11-17 under 35 U.S.C. § 102(a) as being anticipated by Applicants admitted prior art (JPA 4-188065; "JP '065") on page 6 of the present specification.

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The Examiner asserts that Applicants have stated that JP '065 has the same structure as the present invention, and that clarification could be achieved by explaining the differences between the present invention and JP '065 in the response.

Applicants respond as follows.

EP '068 (which corresponds to JP '065) discloses the basic structure of the present invention, as disclosed in the present specification. However, EP '068 does not disclose the color of the covering. In particular, EP '068 fails to even remotely disclose a covering wherein at least a portion of the cover covering the detecting area is of the color black.

At page 6, the present specification discloses that "This cover is of a color which substantially has no influence on the reflected light as a measured wavelength. . . ." This disclosure is not directed to the apparatus structure disclosed in EP '068 (or JP '065), but to the cover of the present invention.

Therefore, EP '068 does not teach or suggest the present invention.

Accordingly, withdrawal of the foregoing rejection is respectfully requested.

III. Response to rejection of claims 11-17 under 35 U.S.C. § 102(b)

On page 3 of the Office Action, the Examiner rejects claims 11-17 under 35 U.S.C. § 102(b) as being anticipated by EP 0 587 222 A2 (EP '222).

Applicants respond as follows.

The Examiner asserts that EP '222 discloses a cover (17) that faces the reagent layer (14) that is on the upper side of the support membrane (13).

Basically, the cover of EP '222 is formed above the absorbent material (16), which is positioned adjacent to at least a portion of the periphery of reading area (15),

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and a portion of the cover appears to have a lower face facing the reagent layer (14). However, as shown in Fig. 1 of EP '222, since the cover (17) is above the absorbent material (16), the cover does not cover the reading area (15), which corresponds to the detecting area of the present invention. In addition, the cover (17) does not face the reagent layer (14).

In the present invention, a cover covers at least a detecting area in a reagent layer. That is, the cover in the present invention covers the detecting area (read area) in the reagent layer. Therefore, the constitution of the present invention is quite different from that of EP '222.

Therefore, EP '222 fails to teach or suggest

a reagent layer defining an upper side and a lower side and having a detecting area, the reagent layer being fixed on the upper side of the support to cover one of the through hole and light permeable area, and
a cover including a lower side facing the reagent layer and which covers at least the detecting area,

Accordingly, EP '222 does not disclose the cover of the present invention.

In addition, in the present invention, at least a portion of the cover covering the detection area is of a color that reflects an amount of light at measured wavelength, and fully absorbs light at a measured wavelength, such that said color has substantially no influence on the reflected light at the measured wavelength.

In contrast, EP '222 cannot have such a constitution as in the present invention because the cover is not present over the read area. Also, since the cover is not over the read area in EP '222, light is not reflected by the cover at the measured wavelength.

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Further, the Examiner asserts that at page 6, lines 45 +, EP '222 teaches that a black pigment means can be used between the absorbent area and the read area that has been read on the claimed black portion of the cover.

EP '222 discloses that the absorbent material may be black (page 45, lines 48-53). The absorbent material does not correspond to the cover (17), but to the absorbent material (16) in Fig. 1 of EP '222. That is, EP '222 discloses at page 6, lines 34-35, that as shown in Fig. 4, absorbent material (16) takes up (absorbs) wash fluid (22), which contains soluble interferents and unbound label, away from read area (15). In EP '222, in order to avoid the influences of fluorescence and luminescence by soluble interferents and unbound label in the measurement of a sample, black materials are used in the absorbent material(16).

In contrast, in the present invention, the black cover fully absorbs light at a measured wavelength to have substantially no influence on the reflected light at the measured wavelength.

Accordingly, the present invention and EP '222 are different with respect to the object to be blackened and with respect to the reason for blackening.

Furthermore, even if the black absorbent material (16) were present as a cover above the reagent area (15), the sample to be measured is absorbed in the black absorbent material (16) so that the measurement cannot be carried out at the read area (15) in the reagent area (15).

Moreover, since EP '222 has no cover corresponding to the cover of the present invention, unnecessary reflected light during measurement is not present.

Unnecessary reflected light is caused in the case of the present invention, which has a

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structure where a cover is present over the detecting area. Therefore, even if the cover (17) in Fig. 1 of EP '222 is black, unnecessary reflected light is not caused and the light for measurement is not reflected because the structure of the present invention differs from that of EP '222.

In view of the above, Applicants submit that the present invention is not taught or suggested by EP '222.

Therefore, withdrawal of the foregoing rejection is respectfully requested.

IV. Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

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APPENDIX

VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION:

The first paragraph was changed as follows.

This is a Continuation of Application No. 08/726,170, now U.S. Patent 6,299,838, filed October 4, 1996, the disclosure of which is incorporated herein by reference.